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Federal Communications Commission  
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Washington, DC 20554

The following comments in response to the Public Notice FCC 06-109, Pleading Cycle Established for Eligible Services List for Universal Service Mechanism for Schools and Libraries, dated July 21, 2006 are hereby submitted:

Internet Access:

IBM requests clarification of the definition of “Basic Conduit Access” to the internet, under the “Internet Access” category of services. There appears to be some variation in the interpretation of this language between the SLD and members of the service provider and applicant communities, and their respective positions can be distilled as follows:

The SLD asserts that “Basic Conduit Access” means that the SLD will fund conduit only, but that the services which can be transported across that basic conduit are also restricted to email and web access, without cost allocation.

IBM (and others) believe that the term, “Basic” is intended to mean that the SLD will fund a link to the internet but will not fund additional “services” beyond the basic transport of information, and NOT that the FCC intends the term basic to restrict what types of user-generated content can be transported.

By the SLD’s definition, a school in California would not be allowed to set up a videoconference with a school in Florida, using their own equipment, if the transporting conduit was purchased as Internet Access. Or a small district of three schools, if it had only purchased a basic Internet Access connection to the internet from each of its schools, would have to purchase a SECOND connection to run their student information service, or a library system to run its card catalog system.

The cardinal point of disagreement concerns the difference between buying a SERVICE from a provider or, in short, “doing it yourself” over a “no frills” connection. IBM believes it is not the FCC’s intention to disallow a school district from buying a few cameras and setting up an ad hoc videoconference to a sister school across the county. Not only would this approach be difficult to adjudicate, it is inconsistent with the section of the ESL which permits setting up a WAN as an Internet Access offering. A WAN restricted to only email or web traffic, pursuant to currently posted SLD guidelines, has little worth when measured against the amount and variety of data traffic a school or library system generates conducting its daily business. If the SLD’s interpretation of the term, “Basic Conduit Access” is upheld, then internet access providers will be unable to provide the fully-featured WAN implied by the ESL, putting all internet access providers at a distinct competitive disadvantage.

Recommendation: Clarify wording in the definition of Basic Conduit Access to preclude additional non-basic services without restricting the traffic that travels over the pathway to the Internet.

#### Eligible Training:

The wording in the Eligible Services List (ESL) on eligible training is inconsistent with the recently released FCC Appeal decision in Henkel & McCoy AR 06-1463. The Henkel decision would appear to provide greater latitude to eligible training than shown in the ESL.

Recommendation: The FCC should correct this inconsistency by revising the wording of the ESL to be consistent with the Henkel decision.

#### Basic Maintenance as a Recurring Service:

Designating Basic Maintenance as a recurring service is inconsistent with business practices by both applicant and service providers.

First, most equipment manufacturers' maintenance contracts are single cost annual. Maintenance contracts are not normally pro-rated since they begin when the equipment is installed or when the one year warranty runs out. This means a single price maintenance contract covers part of two funding years, as do renewals for subsequent years. These are clearly not recurring services, but nonrecurring services by definition.

Second, Basic Maintenance contracts that include technical support for technicians to respond to an applicants site to diagnose, repair/reconfigure, or update operating systems of eligible components are likewise bid on an annual basis. Because these contracts are typically more expensive than simple replacement of a broken item of equipment (parts only contracts), most applicants do not want to take the risk of beginning service until the FCDL is received. If the SLD would complete processing applications by July 1, this would not be an issue. However, many Basic Maintenance contracts are not funded until well into the funding year which deprives the applicant of these support services for many months. For instance, if an applicant receives an FCDL in March, they would only be able to obtain 3 months of services. Because the service is designated as recurring, they are limited to 3/12 of the total price of the contract which also precludes the applicant from asking the service provider to devote additional resources to "catch up" with their maintenance demand.

Third, because of the uncertainty of when work will start, many service providers are reluctant to commit resources unless the applicant agrees to begin work on July 1 and submit a BEAR Form once the FCDL is received. This can create a significant cash flow issue for an applicant since they have budgeted only the non-discounted portion of the contract. We suggest that only applicants with "deep pockets" can undertake this approach. A similar situation occurs with service providers. In theory, a service provider could begin work and only bill the applicant for the undiscounted portion and carry the debt on their books for 3-9 months until the FCDL is received and USAC can be invoiced. Given the business cost of carrying debt, few service providers will embark on this course. The result is that applicant get no service while waiting for the FCDL to be issued.

Recommendation: The FCC should return to the practice of permitting the applicant to designate whether a Basic Maintenance contract was recurring or nonrecurring. This would allow the applicant to have greater flexibility, permit 12 months of Basic Maintenance, reduce disconnects between applicant and service providers, and reduce problems with invoices and BEAR forms.

#### Multi-year Maintenance Contracts:

Many applicant desire three year maintenance contract when equipment is installed. Under the current rules, applicant must pro-rate the second and

third years of a three year contract, then remember to submit the Form 471 and then the BEAR form in the subsequent years. We believe that many applicant select annual contracts, which are more expensive, that multi-year contracts because they fear forgetting to apply for something already paid for a year previously. Most equipment maintenance contracts are in the hundreds of dollars. In terms of the overall E-rate program, this is a relatively insignificant amount of money. We believe the impact on the program would be negligible financially, but it would provide a cost savings to the applicant (and ultimately the program), make PIA review easier, and make invoice processing easier.

The SLD should permit, as an exception to the normal rules, application and reimbursement for three year maintenance contracts and extended warranties in a single funding year.

Respectfully Submitted,

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